IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL REVISION APPLICATION NO.26 OF 2005
WITH
CRIMINAL MISCELLANEOUS APPLICATION NO. 240 OF 2005
AND
CRIMINAL REVISION APPLICATION NO. 27 OF 2005
WITH
CRIMINAL MISCELLANEOUS APPLICATION NO.241 OF 2005

CRIMINAL REVISION APPLICATION NO.26 OF 2005 WITH
CRIMINAL MISCELLANEOUS APPLICATION NO.240 OF 2005

Satish Dhond
r/o Kelwada-Pirna,
Bardez-Goa
presently residing
at Panaji-Goa ... Applicant

versus

The State of Goa
(Special Public Prosecutor,
appointed by order dated
30-08-2005 bearing No.3-1-2004-
LD-ESTT/2330) ... Respondent

CRIMINAL REVISION APPLICATION NO.27 OF 2005 WITH
CRIMINAL MISCELLANEOUS APPLICATION NO.241 OF 2005

Shri Sadanand Shet
Son of Shri Mhalu Shet

major, married, r/o H.No.380,
Tanavade wada-Pirna,
Bardez-Goa ... Applicant

versus

The State of Goa
(Special Public Prosecutor,
appointed by order dated
30-08-2005 bearing
No.3-1-2004-LD-ESTT/2330) ... Respondent

Mr. A. N. S. Nadkarni with Mr. N. K. Sawaikar, Advocates for the Applicants in both the applications.

Mr. S. G. Dessai, Special Public Prosecutor for the State in both the applications.

CORAM : N. A. BRITTO, J.

DATE : 13TH JANUARY, 2006.

J U D G M E N T

The applicants herein who are accused in Crime No.15/2005 which was initially registered under Sections 465, 468, 471 r/w 34 I.P.C. at Porvorim Police Station, have invoked the jurisdiction of this Court under Section 482 of the Code of Criminal Procedure, 1973(Code, for short) to challenge the common Order dated 15-10-2005 of the learned Additional Sessions Judge, Mapusa, cancelling the anticipatory bail granted to them by Order dated 7-3-2005.

2. The applicant Sadanand Shet Tanavade is a MLA from Tivim Constituency. The applicant Satish Dhond is the General Secretary (Organisation) of the Goa Unit of Bharatiya Janata Party(BJP). The said crime came to be registered upon a complaint filed by Filipe Neri Rodrigues, a MLA from Velim Constituency. The said crime was registered against the applicants herein and one Rajendra Ganu who works in the Office of BJP at Panaji.

3. It is necessary to refer briefly to the facts leading to the filing of the said complaint/first information report by the said Filipe Neri Rodrigues.

4. After the Assembly Elections of 1-6-2002, Government was formed by a coalition led by Shri Manohar Parrikar, and as on 28-1-2005 the position of parties in the Goa Legislative Assembly was as follows: BJP - 21, Congress - 15, UDGP - 1 who was supporting the BJP, MGP - 1 who was supporting the BJP, NCP - 1 and Independent - 1, namely the said Filipe Neri Rodrigues. On 29-1-2005 four MLA's of BJP tendered their resignations. The said Filipe Neri Rodrigues resigned from the Cabinet and withdrew support to BJP. So did Ramkrishna Dhavlikar of MGP and as a result the Ministry headed by Shri Parrikar was reduced to minority. The

said Filipe Neri Rodrigues declared his support to the Congress. The Ministry headed by Parrikar having been reduced to minority, His Excellency the Governor directed Shri Parrikar to take a vote of confidence on the floor of the House on 2-2-2005.

5. Two disqualification petitions dated 29-1-2005 came to be filed against the said Filipe Neri Rodrigues. The first was filed by Shri Rajesh Patnekar, a BJP MLA, on the allegation that the said Filipe Neri Rodrigues had joined Congress and the second was filed by the applicant/Sadanand Shet Tanavade on the allegation that the said Filipe Neri Rodrigues had joined the BJP in October, 2002. The second disqualification petition No.2/2005 dated 29-1-2005 was presented to the Speaker in the evening of 1-2-2005 and after a public notice was issued to the said Filipe Neri Rodrigues, the said Filipe Neri Rodrigues put up his appearance through his lawyer on 2-2-2005 and sought time but the Hon'ble Speaker was pleased to give him time till 12 noon of 2-2-2005. On the same day i.e. 2-2-2005 whilst the Assembly Session was in progress the said Filipe Neri Rodrigues was marshalled out of the House by the Speaker quoting Rule 289 in order to prevent him from voting. On 2-2-2005 the Government led by Shri Manohar Parrikar had the strength of 17 MLA's including 1 MLA from UDGP minus 1 being the Speaker as against the strength of Congress of 18 MLA's including

1 from MGP, 1 from NCP and 1 Independent. On the same day, the Government headed by Shri Parrikar was dismissed by His Excellency, the Governor who also swore in Shri Pratap Singh Rane as the Chief Minister and directed him to take a vote of confidence by 28-2-2005.

6. On 15-2-2005 the applicant/Sadanand Shet Tanavade filed an application in the said disqualification petition before the Speaker, for relying upon the Primary Membership Form- being form No.21989 alleged to have been signed by the said Filipe Neri Rodrigues.

7. On 16-2-2005 the complainant/Filipe Neri Rodrigues lodged a complaint against the applicants, BJP Office Bearers and unknown persons complaining that the said Primary Membership Form was a forged document and pursuant to the said FIR that the said crime came to be registered against the applicants and the said Rajendra Ganu under Sections 465, 468, 471 r/w 34 I.P.C. On 18-2-2005 the Police Inspector sent a call letter to the applicant Sadanand Shet Tanavade but the applicant Tanavade did not attend the Police Station and his lawyer complained to the Hon'ble Speaker that there was a posse of Police waiting outside the Assembly Complex to arrest his client, whereupon the Speaker summoned the Director General of Police, the Chief Secretary and the concerned Dy.S.P.

and the Director General of Police assured the Speaker that no further investigations would be carried out whilst the disqualification proceedings were pending before him.

8. On 28-2-2005 the said second disqualification petition filed by the applicant Sadanand Shet against the said Filipe Neri Rodrigues was allowed by the Speaker by holding that the said Primary Membership Form was a genuine document. On the same day, the Deputy Speaker resigned followed by the Speaker himself and as a result Shri Rane was not in a position to take the vote of confidence. Consequently, His Excellency the Governor appointed Shri Francis Sardinha as Pro-tem Speaker and Shri Rane was directed to take vote of confidence on 4-3-2005 but on that day the Government led by Shri Rane was dismissed and President's Rule was imposed. Shri Rane was subsequently sworn in as the Chief Minister on or about 12-6-2005 after the results of Bye Elections.

9. By call letters sent on 28-2-2005 the applicant Tanavade and co-accused Rajendra Ganu were called to the Police Station on 1-3-2005 but they did not attend. The applicants and co-accused Rajendra Ganu instead sent separate written communications contending that no F.I.R. could be lodged or investigation started against them and calling upon the Police

Inspector to close the case, failing which the Investigation Officer would be held responsible. The applicants were sent call letters again on 1-3-2005 to remain present on the same day at 18.00 hrs. and though call letters were served, the applicants and co-accused Rajendra Ganu did not attend the Police Station.

10. On 2-3-2005 the applicants and co-accused Rajendra Ganu filed Anticipatory Bail Applications before the learned Sessions Judge, Panaji, who was pleased to pass an interim order of bail in their favour and pass on the Anticipatory Bail Applications to be decided by the learned Additional Sessions Judge, Mapusa(ASJ). In my view, it was improper on the part of the learned Sessions Judge to have passed interim orders which are unsustainable in law and then make over the cases to be decided by an Additional Sessions Judge. In case for any reason the learned Sessions Judge did not wish to decide the applications himself/herself then the same ought to have been made over to an Additional Sessions Judge, giving the latter the freedom to pass such orders, including interim, as deemed fit.

11. Armed with interim orders in the Anticipatory Bail Applications filed by the applicants and the co-accused Rajendra Ganu, all three attended the Police Station on the same day and their statements were recorded and

then Section 120-B I.P.C. was added to the said crime. On 7-3-2005 the learned ASJ granted Anticipatory Bail in favour of the applicants and the co-accused Rajendra Ganu. In granting their Bail Applications, the learned ASJ, inter alia, observed that the recovery of the document-Primary Membership Form which was allegedly forged could not be by itself a ground for custodial interrogation of the applicants and which could be otherwise traced or secured by calling the applicants for interrogation and that the arrest of the applicants could not be a means to procure the disputed document. The learned ASJ further observed that except Section 468 I.P.C., the other two Sections were bailable and were also triable by the Court of J.M.F.C. and that moreover looking at the nature of the offences conditions could be imposed so that the interrogation was not scuttled. The learned ASJ concluded that custodial interrogation of the applicants was not necessary and on that count the applicants deserved to be granted Anticipatory Bail with conditions, one of the conditions being that they would co-operate with the investigations and the other being that they would not tamper with the witnesses and would not leave the country without prior permission of the Court.

12. The Respondent/State chose not to challenge the said Order of the learned A.S.J. As already stated, after having obtained the interim

orders on 2-3-2005 all the three accused, namely Rajendra Ganu, Satish Dhond and Sadanand Shet Tanavade appeared at the Police Station and their statements were recorded. Later, on 18-3-2005 supplementary statement of accused Sadanand Shet Tanavade was recorded, and, again a further supplementary statement on 19-3-2005 was recorded. The recording of statement on 18-3-2005 has been disputed by the accused Sadanand Shet Tanavade. On 22-3-2005 supplementary statement of Sudhir Narvekar, the Secretary of the Goa Legislative Assembly was recorded and then on 23-3-2005 a search of BJP Office was conducted with a view to find out, in the words of the Speaker, the controversial document, allegedly signed by the complainant, namely the Primary Membership Form bearing No.21989 but it was not found. On 25-3-2005 the residence of accused Sadanand Shet Tanavade was searched but again nothing was found. It is stated that on 19-4-2005 the Scientific Assistant was requested to opine whether a handwriting expert could give his opinion based on a xerox copy of the said controversial document and since he opined in the affirmative, on 2-5-2005 the xerox copy of the said controversial document along with the specimen handwriting signature of the complainant Rodrigues were forwarded to the Examiner of Questioned Documents who on or about 19-4-2005 opined that the purported signature on the said controversial document was not that of complainant Filipe Neri Rodrigues. It is further stated that on 26-5-2005

opinion of the said expert was sought on the handwriting of accused Satish Dhond. On 3-6-2005 the controversial document, as found in the file of the disqualification petition(not the original but a copy), was obtained from the Secretary, Goa Legislative Assembly and forwarded to the handwriting expert for his opinion. It appears that on 7-6-2006 the supplementary statement of accused Satish Dhond was recorded and that of Rajendra Ganu on 8-6-2005. On 9-6-2005 the house of accused Satish Dhond was searched but the controversial document was not found and on 10-6-2005 the house of accused Rajendra Ganu was searched but again the said controversial document was not found. On 17-6-2005 the handwriting expert, is stated to have opined that the handwriting and the date below the signature of Filipe Neri Rodrigues were those of accused Satish Dhond and it is further stated that the handwriting expert opined that the controversial document which was produced before the Speaker and which was obtained on 3-6-2005 from the Secretary was a xerox copy of the original. On 6-7-2005 the Office in charge, B.J.P. Office, was issued a written Order to produce the controversial document. One does not know as to why the Investigating Agency chose to address the said Order to the Office in charge of the BJP Office at Panaji if accused Rajendra Ganu was the Office in charge and not to the President of that party. The statements of Mr. Thali, the Counsel appearing for the petitioner/accused Sadanand Shet Tanavade before the

Speaker was recorded on 2-9-2005 and likewise on 9-9-2005 the statement of Mr. Sonak, the Counsel appearing for the respondent/ complainant Filipe Neri Rodrigues was recorded. On 9-9-2005 the Examiner of documents/handwriting expert opined that the purported signature of Filipe Neri Rodrigues was not of Filipe Neri Rodrigues and that the accused Satish Dhond had filled up the relevant columns on the said controversial document. The said report was received on 15-9-2005.

13. The applications for cancellation of Anticipatory Bail granted to the applicants/accused were filed before the Sessions Court, Panaji on 12-9-2005 and were made over to the learned ASJ which were allowed by the impugned Order dated 15-10-2005.

14. Before dealing with the said applications, being Cri.M.A. No.41/2005 and Cri.M.A. No.42/2005 and the Order passed thereon dated 15-10-2005 of the learned ASJ, it is necessary to deal though briefly, with some of the contentions which were being raised on behalf of the applicants/accused.

(a) It appears that the accused as well as the Speaker scared the Investigating Agency that they would be dealt with for breach of privilege of

the Goa Legislative Assembly. The accused/Sadanand Shet Tanavade in his reply dated 1-3-2005 to the notice issued to him on 28-2-2005 under Section 160 of the Code, referred to Article 194 of the Constitution dealing with powers, privileges, etc. of the Houses of Legislatures and of the Members and Committees thereof and stated that any investigation on the basis of a F.I.R. regarding a document produced before the Hon'ble Speaker would not only attract the breach of privilege of the House but will also amount to committing the contempt thereof. He further stated that in case he participated in the investigations he may also invite both the breach of privilege of the House as also the contempt thereto and further stated thus:-

> "You are therefore informed that, in case you do not close the said case and proceed with the said investigation, you will be solely responsible, liable and accountable not only to the State Legislature but towards any loss either to my reputation, or otherwise, caused to me".

Whilst the proceedings of disqualification petition filed against complainant/Filipe Neri Rodrigues by accused Sadanand Shet Tanavade were going on, it was represented to the Speaker on 18-2-2005 that accused Sadanand Shet Tanavade was sought to be arrested, and, the Hon'ble

Speaker in his roznama of the said proceedings dated 18-2-2005 stated that he had confirmed from the Secretary of the Legislature that the Police were present on the main gate since 2.30 p.m. and that he also found many Police were deployed outside the House and since the matter raised by the petitioner(accused Tanavade) was of serious nature which restrained the parties from participating in the hearing of disqualification petition which was under the Constitution he had to take a serious note of it and, therefore, he directed the Secretary, Legislature, to summon immediately the DGP of Goa State, the Chief Secretary and also the concerned Dy.S.P. to appear before him at 6 p.m. on that day, as interference in the matter like disqualification matter was highly unconstitutional by any of the State machinery for fair justice. The Hon'ble Speaker also noted that he was ordering an inquiry into the matter. However, one does not know what instructions the Hon'ble Speaker gave to the Director General of Police or for that matter to the Chief Secretary and all that is stated on behalf of the State is that no investigations were carried out between 18-2-2005 to 28-2-2005 in deference to the assurances given to the Speaker. Later, after stalling the investigation, by his Orders on 18-2-2005 the Speaker softened his stand on 28-2-2005 by stating that "if the exigencies of law so permit the petitioner(Shri Rodrigues) to file such a F.I.R. and further authorise police to investigate the same, then, so be it". Privileges are not a shield behind

which one can indulge in committing offences hoping that one would not get caught. One does not know whether any inquiry was at all ordered or for that matter carried out as noted by the Hon'ble Speaker for the fact remains that on 28-2-2005 after disqualifying the complainant/Filipe Neri Rodrigues from the Membership of the Goa Legislative Assembly, the Speaker himself had to resign and vacate his Office. The learned ASJ in her Order dated 7-3-2005 observed, and in my view rightly, that the pendency of disqualification petition could not have interfered with the course of investigations since the proceedings at large before the Speaker were distinct from the allegation of forgery and registered offences pending before the Investigating Officer on the complaint of Mr. Rodrigues. To repeat, one does not know as to what instructions the Speaker gave to the Director General of Police but it was certainly not expected of the Director General of Police to have succumbed to any instructions not to carry out the investigations during the pendency of the said disqualification petition. In fact, it was expected of the DGP to have politely but firmly told the Speaker that he should do his duty and that he(the DGP) would do his, by investigating into serious offences which were allegedly committed by the accused. If that was done, it would have been much easier then to locate the original of the controversial document. In this regard reference could be made to the Constitution Bench Judgment in the case of **Kihoto Hollohan**

v. **Zachillhu and others**(1992 SUPP (2) 651) wherein the Hon'ble Supreme Court has clearly stated (in para 97) that the proceedings of disqualification are, in fact, not before the House; but only before the Speaker as a specially designated authority and the decision under para 6(1) of the Tenth Schedule is not the decision of the House, nor is it subject to the approval by the House and the decision operates independently of the House. That being the legal position there was no question of the Investigating Agency committing any breach of privilege of the House by carrying out the investigations or for that matter by the accused in joining the said investigations. The assurance given by the DGP was not at all required to be given. It was expected of the DGP to have stood by the law and not to have bowed down to the instructions of the Speaker, which instructions the Speaker had no authority to give.

(b). It was also contended by the accused that Anticipatory Bail could not be cancelled because there was no formal arrest made and the accused were not released upon execution of bail bonds. This contention has been rightly answered against the accused by the learned ASJ by stating that the same does not stand the test of legal scrutiny mainly by placing reliance on a Division Bench Judgment of this Court in the case of **State of Maharashtra** v. **Vishwas Shripati Patil and others**

(1978 Cri.L.J. 1403). In this context, it may be stated that Section 439 of the Code which gives special powers to the High Court and to the Court of Sessions to grant bail, in terms of sub-section(2) also gives powers to cancel bail and it clearly provides that any person who has been released on bail under this Chapter(and that includes Section 438) be arrested and committed to custody. In this regard, the Division Bench held as follows:-

> "The Chapter postulates two types of release on bail, viz., release after arrest and release from arrest; the first wherein the arrest is accomplished while in the second it is in anticipation. The words "released on bail" clearly cover both types of cases. Particularly under the provisions of Section 438 and orders made thereunder in favour of the person accused of an offence admitting him to anticipatory bail; nonetheless such a person equally answers the description of a person who had been released on bail in the sense admitted to bail by Court. The provisions of sub-sec.(2) of S.439 are intended clearly to recall, revoke or cancel the orders as to bail and those are operative upon the purposes of directing arrest of persons and committing them to custody. Therefore, in all cases, wherever the competent authority or Court makes an order admitting persons accused of offences to bail, the provisions of this sub-section are clearly attracted. Moreover, the phraseology available

in the sub-section using the words like "has been released on bail" will have to be understood in the context of orders that are liable to be made and are made under the provisions of the entire Chapter. Specifically these being the provisions of Ss.436 to 439 (1), S.439 being inclusive. It is obvious that the power conferred by sub-s.(2) is intended to be operative upon and over all types of orders of bail under the Chapter. In the matter of anticipatory bail and its contest stage of arrest will not necessarily precede and yet the person in whose favour such an order is made would be a person who has been released on bail in anticipation of his arrest or apprehended arrest. Sub-sec.(1) of S.438 confers powers to give directions that in the event of such person's arrest he shall be released on bail. Sub-s.(2) deals with the conditions that may form part of such directions. Sub-section (3) then states that if such person is thereafter arrested without warrant by an officer-in-charge of a police station on such accusation, and is prepared either at the time of arrest or at any time while in the custody of such officer to give bail, he shall be released on bail; and if a Magistrate taking cognizance of such offence decides that a warrant should issue in the first instance against that persons, he shall issue a bailable warrant in conformity with the direction of the Court under sub-sec. (1). The provisions are thus in two parts. First that are contained in sub-

> sec.(1), which is a power to give direction, and second that are contained in sub-sec.(3), which statutorily imposes an obligation on the authorities mentioned therein to release a person in accordance with the directions. Thus making of the order with regard to anticipatory bail - arms the person with the direction which has to be given effect to as provided by sub-sec. (3). It shows that direction given in anticipation of arrest with regard to bail is effective and has to be obeyed by the authorities mentioned in sub-sec.(3) in the manner indicated therein. Thus, the person who has been admitted to the anticipatory bail is really a person who answers the terminology in the sense that he has been released on bail under this Chapter".

(c) On behalf of the accused, it was further contended that the complaint of Shri Filipe Neri Rodrigues was not maintainable in view of the statutory bar contained in S. 195(1)(b)(ii) of the Code and the learned ASJ in para 14 of the Order dated 15-10-2005 has rejected the contention that the Speaker is not a Court. It may also be stated here that the Speaker in the proceedings of disqualification has styled himself as a Court. No doubt the Speaker, in the words of late Pandit Nehru, as reflected in the Judgment of **Kihoto Hollohan** v. **Zachillhu and others**(supra), represents the House. He represents the dignity of the House, the freedom of the House and because

the House represents the Nation in a particular way the Speaker becomes the symbol of the nation's freedom and liberty. Therefore, it is right that that should be a honoured position, a free position and should be occupied always by men of outstanding ability and impartiality. The Supreme Court noted that it was inappropriate to express distrust in the high office of the Speaker merely because some of the Speakers are alleged or found even to discharge their functions not in keeping with the great traditions of the high office. The robes of the Speaker do change and elevate the man inside it. However, with the passage of time, it has now been noticed by the National Commission to review the working of the Constitution, (in para 4.18.1, Vol.1) that despite the Tenth Schedule, or because of it, countless defections have taken place without incurring any disqualification. In fact, on an average more defections per year took place after the Tenth Schedule came into force than ever earlier. What has been even more disconcerting is that some of the Speakers have tended to act in a partisan manner and without a proper appreciation, deliberate or otherwise of the provisions of the Tenth Schedule. The Division Bench of this Court in Writ Petition No.107/2005 by Judgment dated 21-12-2005 has held that the Order of the Speaker in disqualifying the complainant was completely unreasonable and passed in bad faith. In other words, the Speaker has been found not keeping with the great traditions of that office.

Section 195 of the Code deals with prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence. Sub-Section(1) provides that no Court shall take cognizance -

(a)(i) ...

(ii) ...

(iii) ...

(b)(i) ...

(ii) of any offence described in Section 463, or punishable under Section 471, Section 475 or Section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or

(iii) ...

(2) ...

(3) In clause (b) of sub-section (1), the term "Court" means a Civil, Revenue or Criminal Court, and includes a tribunal constituted by or under a Central, Provincial or State Act if declared by that Act to be a Court for the purposes of this Section.

(4) ...

The Speaker styled himself as a Court whilst dealing with the disqualification petition, and the accused contended that no investigation could be carried out in view of the prohibition contained under Section 195 (1)(b)(ii) of the Code because there was no complaint filed by the Speaker in respect of the document produced before him, as the Speaker has been declared as a Tribunal and Court for purposes of Section 195(1)(b)(ii) includes a Tribunal. These claims or contentions have got to be rejected for reasons, more than one. Firstly, in the light of the Judgment of the Supreme Court in **Kihoto Hollohan** v. **Zachillhi and others**(supra) the Supreme Court after analysing the concept of a Court in relation to a tribunal has observed that all tribunals are not courts although all courts are tribunals, and has come to the conclusion that the Speaker or the Chairman, acting under para 6(1) of the Tenth Schedule is a tribunal and, therefore, by necessary implication, it has held that a Speaker is not a Court. A three Judge Bench of the Supreme Court in the case of **Dr. Mahachandra Prasad Singh** v. **Chairman, Bihar Legislative Council and others**((2004) 8 SCC 747) has observed that there is no lis between the person moving the petition and the Member of the House who is alleged to have incurred a disqualification. It is not an adversarial kind of litigation where he may be

required to lead evidence. Even if he withdraws the petition it will make no difference as a duty is cast on the Chairman or the Speaker to carry out the mandate of the constitutional provision viz. the Tenth Schedule. As noted by the Supreme Court in **Kihoto Hollohan** v. **Zachillhi and others**(supra) the word "Courts" are used to designate those tribunals which are set up in an organised State for the Administration of Justice. Administration of Justice is meant the exercise of judicial power of the State to maintain and uphold rights and to punish wrongs. Whenever there is an infringement of a right or an injury, the Courts are there to restore the vinculam juris, which is disturbed. A Division Bench of this Court in the case of **N. G. Patil** v. **Arun Gujarathi** (2003(1) Bom.C.R. 3163) has categorically stated that the Speaker in deciding disqualification proceedings functions as a tribunal and not as a Court. It is nobody's case that the Speaker, as a tribunal, has been declared to be a Court as required under sub-section (3) of Section 195 of the Code and hence the Speaker acting under para 6(1) of the Tenth Schedule is not a Court. Secondly, with reference to the words "in respect of a document produced or given in evidence in a proceeding in any Court" appearing in Section 195(1)(b)(ii) of the Code the Constitution Bench of the Supreme Court in the case of **Iqbal Singh Marwah and another** v. **Meenakshi Marwah and another**((2005) 4 SCC 370) has held that the bar created by the said provision of Section 195(1)(b)(ii) of the Code would

apply in a situation where the offences enumerated therein are committed with respect to a document subsequent to its production or giving in evidence in a proceeding in any Court. The situation or contingency where an offence as enumerated in this clause has already been committed earlier and later on the document is produced or is given in evidence in Court, does not appear to be in tune with clauses (a)(i) and (b)(i) and consequently with the scheme of Section 195 of the Code. Assuming for a moment that the Speaker was a Court it was nobody's case that the controversial document was forged or fabricated subsequent to its production before the Speaker and on this count also the provisions of Section 195(1)(b)(ii) of the Code were clearly inapplicable to the case of the applicants/accused.

15. Coming to the merits of the case, it may be stated that Section 439 deals with Special powers of the Court of Session as well as the High Court to grant and cancel bail. Sub-Section(1) provides that a High Court or Court of Session may direct -

> (a) that any person accused of an offence and in custody be released on bail, and if the offence is of the nature specified in sub-section (3) of section 437, may impose any condition which it considers necessary for the purposes mentioned in that sub-section;

(b) that any condition imposed by a Magistrate when releasing any person on bail be set aside or modified:

That a High Court or the Court of Session shall, before granting bail to a person who is accused of an offence which is triable exclusively by the Court of Session or which, though not so triable, is punishable with imprisonment for life, give notice of the application for bail to the Public Prosecutor unless it is, for reasons to be recorded in writing, of opinion that it is not practicable to give such notice.

16. Clause (a) of sub-section(1) of Section 439 of the Code does not spell out as to when a person accused of an offence can be released on bail, but several pronouncements of the Supreme Court indicate that persons against whom there are reasonable grounds for believing that he has been guilty of any offence punishable with death or imprisonment for life shall not be released on bail. As stated in the case of **Gurcharan Singh and others** v. **State of Delhi Administration**((1978) 1 SCC 118) the considerations in granting bail under Section 439(1) are common to Section 437(1) as well. In other words, the condition laid down under Section 437 (1)(i) is a sine quo non for granting bail even under Section 439 of the Code. The same principle has been followed in the case of **Ram Govind Upadhyay** v. **Sudarshan Singh and others**((2002) 3 SCC 598).

17. Likewise, sub-section(2) of Section 439 which gives power to the Court of Session and to the High Court to cancel bail does not specify in what cases bail once granted could be cancelled but here again several pronouncements of the Supreme Court indicate that bail once granted could be cancelled in three broad situations. They are:-

(1) When the grant of bail is unjustified, arbitrary, or otherwise vitiated by serious infirmity or wrong exercise of discretion.

(2) Post bail conduct of the accused being not conducive for further investigations and/or a fair trial.

(3) Change of circumstances which would require the accused to be in custody.

18. A three Judge Bench of the Supreme Court in the case of **State** v. **Sanjay Gandhi**((1978) 2 SCC 41) has said that rejection of bail when bail is applied for is one thing; cancellation of bail already granted is quite another. It is easier to reject a bail application in a non-bailable case than to cancel a bail granted in such a case. Cancellation of bail necessarily involves the review of a decision already made and can by and large be permitted only, if, by reason of supervening circumstances, it would be no longer conducive to a fair trial to allow the accused to retain his freedom during the trial. Again, the Supreme Court in the case of **Ram Govind Upadhyay** v.

Sudarshan Singh(supra) has observed that the considerations applicable to the grant of bail and considerations for cancellation of such an order of bail are independent and do not overlap each other.

As regards situation (1) reference could be made to the case of **Puran** v. **Rambilas and another**((2001) 6 SCC 338) wherein the Supreme Court has stated that one of the grounds for cancellation of bail would be where ignoring material and evidence on record, a perverse order for granting bail is passed. Such an order would be against the principles of law and interest of justice would also require that such perverse order be set aside and bail be cancelled. The same view is followed in **State of Gujarat** v. **Salimbai A. S.**(2003(8) SCC 50) and by this Court in Criminal Miscellaneous Application No.157/2004, **State** v. **Gidambar Salkar**. As regards situation(2) reference could again be made to the case of **Sanjay Gandhi**(supra) wherein the Supreme Court has stated that Section 439(2) of the Code confers jurisdiction on the High Court or Court of Session to direct that any person who has been released on bail under Chapter XXXIII be arrested and committed to custody. The power to take back in custody an accused who has been enlarged on bail has to be exercised with care and circumspection but the power though of an extraordinary nature, is meant to be exercised in appropriate cases when, by a preponderance of probabilities, it is clear that the accused is interfering with the course of

justice by tampering with witnesses. Refusal to exercise that wholesome power in such cases, few though they may be, will reduce it to a dead letter and will suffer the courts to be silent spectators to the subversion of the judicial process. We might as well wind up the courts and bolt their doors against all than permit a few to ensure that justice shall not be done. Again, reference can be made to the case of **Dolatram and others** v. **State of Harayana**((1995) 1 SCC 349) wherein the Supreme Court has stated that rejection of bail in non bailable case at the initial stage and the cancellation of bail already granted, have to be considered and dealt with on different basis. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail, already granted. Generally speaking, the grounds for cancellation of bail, broadly(illustrative and not exhaustive) are: interferfence or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. The satisfaction of the Court, on the basis of material placed on the record of the possibility of the accused absconding is yet another reason justifying the cancellation of bail. However, bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during

the trial. Yet again, reference could be made to **Panchanan Mishra** v. **Digambar Mishra and others**((2005) 3 SCC 143) wherein the Supreme Court has stated that the object underlying the cancellation of bail is to protect the fair trial and secure justice being done to the society by preventing the accused who is set at liberty by a bail order from tampering with the evidence in the heinous crime and if there is delay in such a case the underlying object of cancellation of bail practically loses all its power to the greater prejudice and interest of the prosecution.

As regards situation(3) reference could be made again to the case of **Gurcharan Singh and others** v. **State(Delhi Administration)** (supra) wherein the Supreme Court has stated that under Section 439(2) the High Court may commit a person released on bail under Chapter XXXIII by any Court including the Court of Session to custody, if it thinks appropriate to do so. It must, however, be made clear that a Court of Session cannot cancel a bail which has already been granted by the High Court unless new circumstances arise during the progress of the trial after an accused person has been admitted to bail by the High Court. If a Court of Session had admitted an accused person to bail, the State has two options. It may move the Sessions Judge if certain new circumstances have arisen which were not earlier known to the State and necessarily, therefore, to that

Court. The State may as well approach the High Court being the superior Court under Section 439(2) to commit the accused to custody. When, however, the State is aggrieved by the order of the Sessions Judge granting bail and there are no new circumstances that have cropped up except those which already existed, it is futile for the State to move the Sessions Judge again and it is competent in law to move the High Court for cancellation of the bail. This position follows from the subordinate position of the Court of Session vis-a-vis the High Court. In the case of **Puran** v. **Rambilas and another**(supra) the Supreme Court has approved the observations in the case of **Gurcharan Singh and others**(supra) and has stated that the concept of cancelling the bail on the ground that the accused has misconducted himself or because of some new facts requiring such cancellation(emphasis supplied) is different from the concept of setting aside an order which is illegal or perverse. In fact, the case of **Puran v. Rambilas and another**(supra) is a clear authority to consider the powers of cancellation of bail in three situations or categories enumerated herein above. However, I must hasten to add that the remedy against an unjustified, arbitrary or perverse order in situation (1) would lie to the High Court and not to the Court of Session which granted the bail while in situations (2) and (3) the remedy would be to the very Court of Session which granted bail.

19. Time and again, the Supreme Court has indicated that very cogent and overwhelming circumstances are necessary for the order directing the cancellation of bail, already granted. In this context, reference could be made to the case of **B. M. Singh Judeja** v. **State of Gujarat** ((1984) 1 SCC 284), the case of **Dolatram and others** v. **State of Haryana** (supra) and **Mahant Chand Nath Yogi** v. **State of Haryana**(2003(1) SCC 326). Did the State have very cogent and overwhelming circumstances to approach the very Court of Session with the applications dated 12-9-2005 after the applications for anticipatory bail filed by the accused were granted by that very Court by order dated 7-3-2005 or was it a case where the State had approached the Court of Session with the same old wine in the new bottle, so as to say, without there being any cogent and overwhelming circumstances? When we are too familiar with some words, we tend to lose their real meaning. Needless to observe the word "cogent" means convincing, compelling, and the word "overwhelming" means irresistible through force of numbers, influence, etc. The reason why the applications for grant of anticipatory bail were opposed was that the State wanted to locate or recover the original of the controversial document namely, the said Primary Membership Form of Bharatiya Janata Party which according to the complainant Rodrigues was forged and fabricated by the applicants/accused and others. The learned ASJ was very much aware of

this opposition for the learned ASJ in her Order dated 7-3-2005 granting anticipatory bail to the accused had observed that the presence of the applicants(accused) was insisted in police custody to secure the original from them or to trace the original or the source of the original. The learned ASJ was also aware that the basis for opposing the bail application was, inter alia, that there was no co-operation from the applicants(accused) and that their presence in police custody was necessary in order to secure the original, trace the original from them or the source of the original. The learned ASJ took note of State's contention that the accused was scuttling the issue without disclosure of truth and misleading vis-a-vis the document in question and concluded that even if such a contention was accepted, custodial interrogation of the applicant(accused) would not achieve the purpose of locating the document. The fact that the controversial document did not form part of the disqualification petition was also very much present in the mind of the learned ASJ. The learned ASJ further observed that the recovery of the controversial document(alleged form) by itself could not constitute a ground for the custodial interrogation of the accused which could otherwise be traced/secured by calling the applicants for interrogation and that the arrest of the applicants was not the means to procure the disputed document. The learned ASJ, therefore, felt that the applicants(accused) could be admitted to anticipatory bail with conditions

and proceeded to grant their applications for anticipatory bail.

Admittedly, the State till date has chosen not to challenge the said order of the learned ASJ dated 7-3-2005 by challenging the same before this Court but on the contrary the State approached the very Court of ASJ with the said applications for cancellation of bail dated 12-9-2005.

20. In which of the three situations did the State seek cancellation of bail? The applications filed for cancellation could be termed as "hotchpotch" applications in that it was not clearly specified under what grounds the anticipatory bail, granted in favour of the applicants, was sought to be cancelled, inasmuch as even the provisions of law under which the same were filed was not specifically quoted. By way of illustration the very first paragraph of applications for cancellation of bail could be reproduced:-

> "For supervening circumstances and/or subsequent events and/or special reasons stated in the paragraphs below, petitioner(State of Goa) hereby invokes jurisdiction of this Hon'ble Court under Sections 437 (5) and/or 439(2) of Cr.P.C., 1973".

Thereafter the applications proceed to state that "the facts and circumstances mentioned above establish that the accused has misused and abused liberty of being on bail, has misconducted himself and has misdirected investigation process. He has obtained bail by misrepresentation and suppression of facts and, therefore, it was necessary, in the interest of fair and proper investigation that accused be committed to police custody by cancelling the bail granted to them".

21. Although the applicants/accused have set out that the said applications for cancellation of bail were filed on three grounds which have been specified by them in para 16, about five grounds could be culled out from the said applications for cancellation of bail. Before referring to the said grounds, it is necessary to take note of the reasons given by the learned ASJ for cancellation of bail. The learned ASJ has noted that no investigations were conducted from the date of registration of offence on 16-2-2005 till 28-2-2005 on account of the assurances given by the then D.I.G. to the Speaker. There has been substantial progress in the investigation by recording statements of the accused, conducting various searches for the recovery of the respective document including the statement of the Advocates appearing for the accused and the complainant apart from the Secretary of the Legislative Assembly which shows glaring

discrepancies of the location of the document in question and that to cite an instance the accused Tanavade had claimed that it was given to him by his lawyer to be produced before the Speaker and which on account of objection was inspected and returned to him and which in turn was given by him to co-accused Satish Dhond. Thereafter, the learned ASJ proceeded to note that there was serious doubt on the original document irrespective of the observations of the Speaker in his order at paras 137 and 138 leading to the inference that the location of the original itself was in dispute. The learned ASJ further observed that the report of the examiner of the questioned documents prima facie reflected that the signature on the said form(primary application form)(was not of the complainant and this was a new circumstance which clearly pointed to the fact that the signature appearing on the enrolment form purported to be that of Shri Filipe Neri Rodrigues was not his signature which has been all along the case of the complainant. The learned ASJ also noted that there was material variance in the statements of the accused and the co-accused as also the Advocates on the location of the document and no concrete statements were forthcoming even though supplementary statements were recorded of the accused and this would justify the apprehension of the prosecution that supplementary statements are made by the accused to frustrate the investigations and thereby hamper administration of fair justice and,

therefore, the learned ASJ concluded that the State had spelt out supervening circumstances justifying the cancellation of bail.

22. The first ground for cancellation which could be culled out from the applications filed by the State for cancellation of bail is that the order dated 7-3-2005 is based on wrong assumptions and premise and has resulted into wrong conclusions which was also a ground to cancel bail. Prima facie, it appears that the order dated 7-3-2005 is arbitrary and was passed in exercise of wrong discretion but such an order could not be remedied by approaching the very Court which had made it. In other words, the remedy against the first ground taken on behalf of the State was by way of approaching this Court and, as already stated, till date the State has chosen not to challenge the said order dated 7-3-2005 of the learned ASJ. One does not know why the State suffered an order which according to it was passed on wrong assumptions for more than six months.

The second ground given in the application is that all the three accused were interrogated from time to time and in their statements recorded each of them has given a different version regarding making of the document, its custody from one person to another, so as to confuse and misdirect the Investigating Agency and hamper the progress of investigation

and as a consequence, it has not been possible so far to trace the maker of the forged document and to find out as to how the forged document was transmitted from place to place until its duplicate came to be placed on record of disqualification petition no.2/2005 and that the accused are emboldened by the weapon of anticipatory bail have been giving different statements at different times on the same issue with impunity.

There is no doubt that the custodial interrogation of an accused is much more result oriented than interrogating an accused while on anticipatory bail. It is only in the statement of accused Sadanand Shet Tanavade which the Investigating Officer chose to record not because he wanted it but because the said accused wanted it to be recorded, that it was stated by the latter that the said controversial document, after it was being objected to, was given back by the Speaker and thereafter submitted to the Office of the BJP. Apart from that, it appears that the case of the accused was always that the said document went from the hands of accused Rajendra Ganu to the hands of accused Satish Dhond and then to accused Tanavade and then to the Advocate of the latter namely Shri Thali and thereafter to the Speaker. However, when the file was returned by the Speaker, it was not found in the said file. In fact, the original controversial document, as can be seen from the proceedings of the said disqualification

petition was in the hands of the Advocate of accused Tanavade, Shri Thali on 16-2-2005 when it was shown by the latter to the Advocate of the complainant Shri Sonak but surprisingly it landed in the hands of the Speaker on 19-2-2005 to be shown by the Speaker to the complainant, and how it travelled from the hands of the Advocate Shri Thali to the hands of the Speaker has remained a mystery. After the complainant was disqualified on 28-2-2005 and after the Speaker resigned, the file of the disqualification petition was taken away by the Speaker to be returned back only on 2-3-2005 at 12 noon but not with the original but only with a copy of the said controversial document. The Secretary of the Goa Legislative Assembly as well as the Advocate of the complainant Shri Sonak have clearly stated that the original of the said controversial document was not handed over to the Speaker in the course of disqualification proceedings and the fact that it was not found in the file when it was returned would support a prima facie conclusion that it was not produced before the Speaker at all and this fact that it was not found in the records and proceedings of the Speaker on 2-3-2005 was a fact known to one and all through the press and the State may not feign ignorance about the same. In other words, it was well known prior to the order dated 7-3-2005 granting anticipatory bail to the accused that the said document was not found in the records and proceedings of the disqualification petition. In such a situation, I fail to understand why the

Investigating Agency issued summons to the Office in charge of the BJP Office at Panaji to produce the said document. The Speaker in his order dated 28-2-2005 disqualifying the complainant had stated that the document had become the property of the House(thereby accepting that the original document was with him) but till date nothing in that regard appears to have been done. The records and proceedings of disqualification petition also point out a needle of strong suspicion regarding the complicity of others in making the original document to disappear but the State has not at all chosen to proceed in that direction. In my view, the fact that the accused gave different statements in the course of their interrogation could not be considered as a cogent and overwhelming circumstance necessitating the cancellation of bail granted to the said accused. Likewise, the ground that accused are required to be interrogated in custody cannot be a good ground for cancellation of bail granted as long as the Order dated 7-3-2005 was not assailed by the State.

The third ground is that the investigation discloses that the original of the forged document was not produced before the Speaker in the disqualification petition no.2/2005 and that co-accused Rajendra Ganu has stated that the original was handed over by him to co-accused Satish Dhond and the statement of accused Tanavade indicates that the original was

handed over by him to his lawyer and the statement of his lawyer indicates that the original was produced by him before the Hon'ble Speaker. It is further stated that the records of the disqualification petition made available to the Investigating Agency by the Secretary of the Goa Legislative Assembly and the correspondence with them indicate that the original was not on the file of the disqualification petition and was not taken on record by the Hon'ble Speaker. Here again, I may repeat that the record of the proceedings of the disqualification petition and the fact that although the Speaker had stated that the document was produced before him but indeed was not found in the file was a fact which was known to the State prior to the grant of anticipatory bail and cannot be considered as a supervening circumstance. If the Speaker stated in his Order dated 28-2-2005 that the document was with him(as property of the house) and later it was not found in the records, it is this Speaker that should have been first requested to produce it(and not the office in charge of BJP Office) and on his failure to produce it, proceeded in accordance with law. Nothing of that sort appears to have been done.

The fourth ground urged in the application was that on 2-5-2005 the xerox copy of the disputed document along with admitted specimen signature of the complainant were forwarded to the Government

examiner of questioned documents, Hyderabad and on 19-5-2005 the said examiner opined that the signature of the complainant with the date appearing on the forged document was not that of the complainant. Here, it may be observed that the said opinion was not a new circumstance or supervening circumstance but only corroborated the very foundation of the case of the said complainant namely that his signature was forged and the document was fabricated.

The fifth ground is that on 26-5-2005 xerox copy of forged document along with admitted signatures of co-accused Satish Dhond were forwarded to the said Government examiner who opined on 17-6-2005 that the handwriting as well as the figures below the forged signature of the complainant is that of the co-accused Satish Dhond. This again cannot be termed to be a cogent and overwhelming supervening circumstance as wrongly assumed to be so by the learned ASJ. That the handwriting on the controversial document was that of accused Satish Dhond was a fact which the learned ASJ ought to have known when the order dated 7-3-2005 was passed since accused Satish Dhond had filed an affidavit on 17-2-2005 before the Speaker mentioning therein that it is he who had enrolled the complainant as a Member and it is he who had filled in the Membership form(controversial document) and the complainant Filipe Neri Rodrigues

had signed the same. Therefore, there was nothing new in the opinion dated 17-6-2005 given by the Government examiner that the handwriting as well as the figures on the controversial document were those of accused Satish Dhond.

23. The fact that the State chose to add Sections 193, 196, 199 and 200 I.P.C. on 21-10-2005 is not a ground urged in the applications for cancellation of bail. The said addition cannot be termed to be a new cogent and overwhelming circumstance. For example, it is understandable that in a case when initially an offence of attempt to murder is registered under Section 307 I.P.C. and an accused is released on bail and subsequently the victim dies necessitating the registration of an offence of murder under Section 302 then in such a situation the addition of new Section as supervening circumstance may justify cancellation of bail but certainly additions of offence to the same set of facts cannot justify cancelling of bail unless it is shown that omission to add the Sections was done with a view to help the accused. The learned ASJ was wrong in considering the vague allegations of the State in coming to the conclusion that there were cogent, overwhelming and supervening circumstances which necessitated the cancellation of anticipatory bail granted to the accused.

24. As regards filing of two sets of applications on behalf of the accused, it may be stated that the impugned order dated 15-10-2005 was challenged by the applicants under Section 397 r/w Section 482 of the Code in Criminal Revision Application Nos.26 and 27/2005 and at the time of admission an objection was raised on behalf of the State that the applicants had not invoked the jurisdiction of this Court under Section 482 but had invoked the same under Section 397(2) of the Code but the impugned Order was interlocutory against which no revision was maintainable and it was observed by this Court that the said objection prima facie appeared to be super technical; and with a view to overcome the said objection the applicants have filed another set of petitions under Section 482 of the Code to overcome the said hyper technical objection. Since both the sets of petitions are disposed off by this common Judgment nothing survives in the said hyper technical objection taken by the State in the said Criminal Revision Application Nos.26 and 27 of 2005.

25. Admittedly, the impugned Order cancelling the anticipatory bail granted to the accused is an interlocutory order which is not revisable and it has been submitted on behalf of the State by placing reliance on various decisions of the Supreme Court relating to Section 482 of the Code particularly the case of **Zandu Pharmaceutical Works Ltd. and others** v.

Mohd. Sharaful Haque and another ((2005) 1 SCC 122) that extraordinary jurisdiction need not be exercised to disturb the impugned Order which has been passed to facilitate the investigations. The Supreme Court in the aforesaid case has reiterated that the exercise of power under Section 482 should be an exception and not the rule. The section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of court, (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognizes and preserves inherent powers of the High Courts. While exercising powers under this Section, the Court does not function as a court of appeal or revision. Inherent jurisdiction under the section, though wide, has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid

down in the section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers, the court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice.

26. It has been stated by the Apex Court in the case of **Mary Angel and others** v. **State of T.N.**((1999) 5 SCC 209) with reference to Section 482 of the Code that although inherent powers of the High Court have to be exercised sparingly, judiciously and in appropriate cases as mentioned in Section 482 of the Code, they can be used for doing justice according to law where no express power is available to do a particular thing and express power does not negative the existence of such power(emphasis supplied). This principle is clearly applicable to this case. Although it was stated by the Supreme Court in the case of **Amar Nath and others** v. **State of Haryana and others**(AIR 1977 SC 2185) that a harmonious construction of Sections

397 and 482 would lead to the irresistible conclusion that where a particular order is expressly barred under Section 397(2) and cannot be the subject of revision by the High Court, then to such a case the provisions of Section 482 would not apply, but later, the Supreme Court in the case of **Krishnan and another** v. **Krishna Veni and another**(AIR 1997 SC 987) speaking through three learned Judges has followed the ratio of **Madhu Limaye** v. **State of Maharashtra**(AIR 1978 SC 47 - a three Judge decision) and **V. C. Shukla** v. **State**(AIR 1980 SC 962- a four Judge decision) and has held that though a revision before the High Court u/s. 397(1) is prohibited under sub-Section (3) thereof, inherent power of the High Court is still available u/s. 482 of the Code. The Supreme Court has further held that when the High Court finds that there is grave miscarriage of justice or abuse of the process of the Court or the required statutory procedure has not been complied with or there is failure of justice, it is but the duty of the High Court to have it corrected at the inception lest grave miscarriage of justice would ensue.

27. Here, we have a case where the applicants/accused, so to say contend that they were rightly granted anticipatory bail by the learned ASJ but that order has been wrongly cancelled by the impugned order dated 15-10-2005. It is the duty of this Court to set right a wrong committed by

the Court below. The applicants/accused have no other remedy, there being no revisional remedy available as the impugned order is an interlocutory order and their only remedy is by way of invoking of the extraordinary jurisdiction of this Court under Section 482 of the Code. The expression "to secure ends of justice" in Section 482 of the Code is to be used not only in relation to the State but in relation to the accused as well who are now aggrieved by a palpably illegal order passed against them, by cancelling the anticipatory bail. It has been submitted on behalf of the State that pursuant to the cancellation of their bail the applicants had a remedy of submitting to the custody and then applying for bail again. In my view, that is no remedy at all. Again, it has been submitted that the extraordinary jurisdiction should not be invoked in favour of the applicant/accused since they did not surrender to the Court after their bail was cancelled. Here, the boot appears to be on the other foot. The learned ASJ after cancelling the bail had stated that the State through its Officers would be at liberty to act accordingly and although the applicants/accused were present before the learned ASJ at the time when the order cancelling the bail was pronounced the State through its Officers who were present chose not to arrest the applicants/accused.

28. In my view, the application for cancellation of bail which was filed after a lapse of more than six months of granting bail to the

applicants/accused was vague and did not make out a case of any cogent and overwhelming supervening circumstances calling for cancellation of bail and, therefore, the same ought to have been rejected by the learned ASJ. In the absence of cogent and overwhelming supervening circumstances the learned ASJ could not have reviewed the Order dated 7-3-2005 and that too after coming to the conclusions which I have reproduced hereinabove in paras 11 and 19. If there was no progress in the investigations or the investigations had come to a standstill the State ought to blame no one else but itself. Right from the beginning the State showed a disinclination to proceed with the investigations with an urgency they deserved, considering that the offences alleged were against the polity of the State and as a result of which one of the elected MLA's had to suffer the ignominy of disqualification which now has been set right by the Division Bench of this Court in Writ Petition No.107/2005 by Judgment dated 21-12-2005.

29. Right from the beginning, the State showed disinclination in investigating the case. When the accused were the Members of the ruling party till 2-2-2005 when the Ministry led by Shri Manohar Parrikar was dismissed, a case having such political dimension ought not to have been entrusted to one single Police Inspector and the least the DGP/DIG ought to have done was to have recommended the entrusting of such a case in the

hands of an independent agency like the CBI or entrust the investigations to a team of some senior officers so that the entire truth beyond the controversy was investigated. Instead of that, the Director General of Police appears to have given an assurance that the accused would not be arrested and accordingly no investigations were at all conducted till 28-2-2005. One cannot loose the sight of the fact that the applicants/accused were doing what they allegedly did to keep their party and its Chief Minister who was also the Home Minister in power. After the applicants/accused were granted anticipatory bail no efforts were made to challenge the Order before this Court inspite of the fact the State now contends that the said Order dated 7-3-2005 was passed on wrong assumptions and premises and had resulted in wrong conclusions. The accused were not even formally arrested after the said Order. Thereafter, the accused were not arrested when they were available before the ASJ on 15-9-2005 when their anticipatory bail was cancelled and even later one of the accused is stated to have moved freely on 18-10-2005 even under the very nose of the D.I.G. being harboured by other leaders of that party and yet the accused were not arrested. The explanations given for not arresting either on 15-9-2005 or 18-10-2005 are not convincing. The accused even freely appeared before this Court on 19-10-2005 when the order dated 15-10-2005 of the learned ASJ was stayed. The filing of applications for cancellation of bail, in the

circumstances, and without there being any challenge to the order dated 7-3-2005, appears to be an attempt on the part of the State to pull wool over the eyes of the public. Although the accused complain that they were harassed by the Investigating Agency, that appears to be far from the truth. The facts show that they were pampered. Otherwise, it is unheard of, that a police officer will record statements of accused as and when desired by an accused and being assisted by his Advocate or for that matter give copies of such statements to the accused or seek the permission of accused Tanavade to interrogate his Advocate. This is what has happened in this case.

30. As already stated the impugned Order of the learned ASJ is perverse and illegal inasmuch as there were no supervening cogent and overwhelming circumstances which had taken place after 7-3-2005 necessitating the cancellation of the bail. Consequently, the applications under consideration deserves to succeed and the impugned common Order dated 15-10-2005 deserves and is hereby set aside with no order as to costs.

N. A. BRITTO, J.

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